

**PT 99-29**

**Tax Type: PROPERTY TAX**

**Issue: Religious Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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<b>AMERICAN LEGION</b>	)	
<b>WASHBURN POST # 661</b>	)	<b>Docket #95-102-3</b>
<b>Applicant</b>	)	
<b>v.</b>	)	<b>Parcel Index # 03-2C-03-01-110-011</b>
	)	
<b>THE DEPARTMENT OF REVENUE</b>	)	<b>Barbara S. Rowe</b>
<b>OF THE STATE OF ILLINOIS</b>	)	<b>Administrative Law Judge</b>

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Dean E. Poignant, Attorney at Law, for American Legion Washburn Post # 661.

Synopsis:

The hearing in this matter was held at the Illinois Department of Revenue, (hereinafter the "Department") on July 7, 1998, to determine whether or not Woodford County Parcel Index No. 03-2C-03-01-110-011 qualified for exemption during the 1995 assessment year.

Mr. Thomas A. Bratt, Adjutant, and Mr. Gilbert Holocker, current Commander and Senior Vice Commander in 1995 of American Legion Washburn Post # 661, (hereinafter referred to as the "Applicant") were present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant was the owner of the parcel during the 1995 assessment year; secondly, whether the applicant is a veteran's organization; and lastly, whether the parcel was used by the applicant for exempt purposes during the assessment year. Following the submission of all the evidence and a review of the record, it is determined

that the applicant owned the parcel during all of the 1995 assessment year. It is also determined that the applicant is a veteran's organization. Finally, it is determined that the applicant did not use the property for charitable purposes that were also patriotic and civic during the 1995 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Department that Woodford County Parcel Index No. 03-2C-03-01-110-011 did not qualify for a property tax exemption for the 1995 assessment year was established by the admission into evidence of Dept. Ex. Nos. 1 through 5. (Tr. p. 9)

2. On March 29, 1996, the Department received a property tax exemption application from the Woodford County Board of Review for Permanent Parcel Index No. 03-2C-03-01-110-011. The applicant had submitted the request and the board recommended granting the exemption for the 1995 assessment year. The Department assigned Docket No. 95-102-3 to the application. (Dept. Grp. Ex. No. 2)

3. On August 15, 1996, the Department denied the requested exemption application, finding that the property was not in exempt use. (Dept. Ex. No. 3)

4. The applicant timely protested the denial of the exemption and requested a hearing in the matter. (Dept. Ex. No. 4)

5. The hearing convened at the Department's offices in Springfield, Illinois on July 7, 1998, was held pursuant to that request. (Dept. Ex. No. 5)

6. The applicant acquired the subject property by a warranty deed dated January 8, 1934. The street address of the subject parcel is 104 East Parkside, Washburn, Illinois. Located on the parcel is a 3,520 square foot one-story meeting hall. The building is a huge log cabin that was donated by the members of the community for the purpose of a post home for the applicant. (Dept. Ex. No. 2 pp. 1, 3, 21-22; Applicant's Ex. F, I; Tr. pp. 11, 21)

7. The meeting hall on the subject parcel contains a dining/banquet room, a stage, a pantry, dishwashing room, “back” room, two restrooms, a kitchen, bar room and a front entrance for total square footage of 3,520. Attached to the building is the 2,030 square foot “Commander’s Cove”. The cove is an open porch that is a huge carport. (Applicant’s Ex. F, I, & J; Tr. p. 29)

8. The building on the subject parcel is used for monthly meetings of the applicant and its auxiliary. Also, a Euchre tournament is held on the first Friday of each month, breakfast is served on the first Sunday of every month, a chicken dinner is held on the 3<sup>rd</sup> Saturday of every month, and a community consignment sale is held every year. Boy Scouts meet in the building on a monthly basis during the school year. In addition in 1995, other groups used the building for various functions.<sup>1</sup> (Dept. Ex. No. 2 pp. 1, 4; Applicant’s Ex. G, K; Tr. p. 18-19, 30-32, 38-40)

9. The applicant rents the building to others for events such as meetings, receptions, weddings, or benefits. The contract used for the rental of the building states at paragraph 1 under “LOG CABIN USER FEE SCHEDULE”: “There will be NO WAIVER OF FEES.” The applicant charges paid-up members of the post a user fee of \$125.00. A non-Member is charged a fee of \$125.00 per day or event subject to a special use fee<sup>2</sup>. For businesses and organizations outside the community, the charge is \$200.00 per day or event, subject to a special use fee.<sup>3</sup> (Applicant’s Ex. H; Tr. p. 26, 30, 35-37)

10. The applicant operates a bar in the building during functions held on the premises. The State of Illinois Liquor Control Commission issued the applicant liquor license No. 97-1A

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<sup>1</sup> In particular: a soup day, the Lions Club fish fry, a community wide consignment sale, funeral dinners for deceased members, the Washburn fall festival, the junior and senior high school athletic banquets, an area alumni banquet, ladies and men’s golf banquets, the Masonic golf banquet, the Marshall County Fair board appreciation dinner, wedding receptions, a New Year’s Eve dance, Senior’s birthday parties, celebrations of weddings and anniversaries, and a fertilizer company held “an introduction of products” in the building.

<sup>2</sup> The special use fee is found at chapter 7 of the agreement and states: Any “Special Use” fees not covered by the above must be determined by the Post 661 Membership, upon petition, at a regularly scheduled Post meeting, or, in the event of an Emergency Special Use, by the Post Commander and his Official Executive Committee, subject to final action by the Post at its next scheduled meeting.

<sup>3</sup> Members of the applicant testified that the applicant would charge an organization initially for the use of the building and then vote at a subsequent meeting to make a donation to the organization if it was known to be part of the community.

007388 on October 23, 1996. The license was renewed on September 30, 1997. The applicant also has a license for the sale at retail of alcoholic liquors from the Village of Washburn. In the rental agreement of the applicant is a provision that the applicant will dispense all alcoholic beverages. No other alcoholic beverages are allowed in the post. The applicant is authorized under the Retailers' Occupation Tax Act to engage in the business of selling tangible personal property at retail in Illinois and was issued IBT# 1654-0034 by the Department. (Applicant's Ex. A, B, H, & L; Tr. p. 31, 36)

11. The applicant was incorporated under the general not for profit corporation act of Illinois on February 7, 1996. The applicant had been incorporated previously, but had allowed the incorporation to lapse. The purpose of the applicant is:

To promote the social welfare of the community (that is to promote in some way the common good and general welfare of the people of the community); To carry on programs to perpetuate the memory of deceased veterans and members of the Armed Forces and to comfort their survivors; To conduct programs for religious, charitable, scientific, literary, or educational purposes; To sponsor or participate in activities of a patriotic nature; To provide social and recreational activities for its members. (Dept Ex. No. 2 pp. 5-7; Tr. p. 11, 24)

12. Applicant's financial report for 1995 states that the applicant had a balance on hand for checking on December 31, 1994, of \$8,999.86. The applicant had income for 1995 of \$51,008.51. Applicant's expenses for that period were \$51,463.76. The balance at the end of the year, on December 31, 1995, was \$8,544.61. Applicant's income for the year came from the membership and rental activities. The majority of applicant's expenses were for food, beverages, and related items for the aforementioned activities<sup>4</sup>; additional expenses were for flags, caps, membership dues, and donations. The applicant is affiliated with the National American Legion. (Dept. Ex. No. 2 pp. 8-20; Applicant's Ex. C; Tr. pp. 15-23)

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<sup>4</sup> For example, groceries, liquor, beer, ice, advertising, license fees, towel service, repairs, sales tax payments to the Department, cable, telephone, electric, and gas services.

13. The applicant has annual Memorial, Veteran's Day, and 4<sup>th</sup> of July celebrations that are open to the public. Meals served in conjunction with those celebrations are free to the public. The applicant furnishes flags for the Avenue of Flags that the town displays on Flag Day. On that day, flags are placed every 50 feet around the applicant's building. The applicant also gives an annual scholarship to a high school student. The applicant sponsors the Boy Scouts. (Tr. pp. 13-15, 24-27)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

Pursuant to the authority granted by the Constitution, the legislature has enacted statutory exemptions from property tax. The provision at issue is found at 35 **ILCS** 200/15-145 and states:

All property of veterans' organizations used exclusively for charitable, patriotic and civic purposes is exempt.

In interpreting the above statutory language, the Supreme Court in North Shore Post No. 21 v. Korzen, 38 Ill.2d 231 (1967), held that the predecessor statute to 35 **ILCS** 200/15-145<sup>5</sup> was constitutional and that the provision granting an exemption to a veteran's organization required

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<sup>5</sup> At the time North Shore Post No. 21 v. Korzen was decided, the exemption for veterans' organizations was found at Ill. Rev. Stat 1963, chap. 120, para. 500.18. The relevant language of the statute is identical to 35 **ILCS** 200/15-145.

the organization's utilization of the property encompass all three of the required uses: civic, patriotic, and charitable. Regarding the constitutionality of the statute, the court said:

It is our view that the legislature, in enumerating the purposes for which property must be used to render it exempt, meant to use the conjunction “and” in its ordinary sense rather than as a disjunctive conjunction which would permit any one of the three stated uses as being sufficient to exempt the property from tax. Therefore, in order for property of veterans’ organizations to be exempted from taxation it must be shown not only that the property was used exclusively for charitable purposes, but also that such use was patriotic and civic. This is not a broader exemption than is permitted by the constitution, rather it is more restrictive, therefore, section 19.18 pertaining to veterans’ organizations is not unconstitutional. *Id.* at 233-234.

In North Shore, the court found that the applicant's usage of the property for its meetings, wedding receptions, and maintaining a bar on the premises necessitated a finding by the court that the primary use of the property was not exempt. The Supreme Court stated:

Plaintiff has not shown, however, that the primary use of the premises was in furtherance of these charitable purposes. The record shows that the premises are used primarily for the following purposes: meetings, both business and social, of the plaintiff and its various auxiliaries; wedding receptions of members of the Post and third parties; dinners and social parties for plaintiff and its auxiliaries; meetings of boy scout troops; meetings of other veterans organizations for a rental donation of \$15; a bar is maintained primarily for members; . . . . None of these uses are *per se* patriotic and charitable. *Id.* at 235-236.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one whom asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967).

There is no dispute that the applicant herein is a veteran's organization. Therefore, the only question before me is whether the activities of the applicant on the parcel in question qualify as charitable, patriotic, and civic. The Supreme Court in North Shore specifically enumerated the same activities that this applicant does on the parcel in question as not *per se* charitable and patriotic. I therefore find that the applicant has not established that its use of the subject property qualifies the parcel for a property tax exemption. There is no dispute that the applicant's endeavors benefit a great number of people and are a worthy use of the parcel in question. However, that is not the standard set by the constitution, legislature, and court system to grant a property tax exemption to a veteran's organization. The court has stated, in its interpretation of the statute, that the use must be exclusively for charitable purposes, which are also patriotic and civic.

It is therefore recommended that Woodford County Parcel Index No. 03-2C-03-01-110-011 remain on the tax rolls for 1995 and be assessed to the applicant, the owner thereof.

Respectfully Submitted,

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Barbara S. Rowe  
Administrative Law Judge  
March 22, 1999